From: Caleb Dalton
To: Wilkens, Scott B.
Cc: Driscoll, Robert; Duncan, Kyle; Lori Kisch; Benjamin Berwick; Jim Campbell; Gore, John; Alyssa Lareau; Aria Vaughan; Stephens, Bob; Stewart, William; Bowers, Karl; Candyce Phoenix; Christopher Brook; Pratt, Carolyn; Corey Stoughton; Chase Strangio; cynthia.robertson@pillsburylaw.com; David Cortman; Dewart, Deborah; Dwayne Bensing; Elizabeth Gill; Nestler, Emily B. (CIV); Gordon, Frank; Nager, Glen; Schaerr, Gene; Lee, Jason (CIV); Jon Davidson; James Esseks; La Rue, Joseph; Burnham, James; Jonathan Newton; Jeremy Tedesco; Ken Connelly; Kerri Elliott; Kyle Palazzolo; Kristen Waggoner; Platzer, Luke C.; mark@sigmonlawfirm.com; Matt Sharp; nathaniel.smith@pillsburylaw.com; Francisco, Noel; Peter Renn; Smith, Paul M.; Ripley Rand; Sean r. Keveney; Tara Borelli; Brooks, Tyler; Ziko, Thomas; Torey Cummings; Tim Shail; Whitney Pellegrino; Gary McCaleb; Nathaniel Bruno; Doug Wardlow; Paul Stancil; chris@osbornconflictresolution.com; Robert Potter
Subject: RE: Proposal for limitation of witnesses
Date: Wednesday, August 31, 2016 5:02:00 PM

Counsel,

Just to follow up and confirm the agreement reached regarding deposition scheduling during this afternoon's call.
The parties agreed as follows:
1. Given the lack of a protective order in place, the depositions tentatively scheduled for next week will be rescheduled.
2. The deadline for fact witness depositions should be moved from September 23 to October 7.

Best,
Caleb

Caleb Dalton
Legal Counsel
Alliance Defending Freedom
480-444-0020
480-388-8016
480-444-0028
CDalton@ADFlegal.org
ADFlegal.org

-----Original Message-----
From: Wilkens, Scott B. [mailto:SWilkens@jenner.com]
Sent: Wednesday, August 31, 2016 2:27 PM
To: Caleb Dalton <CDalton@adflegal.org>
Cc: Driscoll, Robert <rdriscoll@mcglinchey.com>; Duncan, Kyle <KDuncan@Schaerr-Duncan.com>; Lori Kisch <lori.kisch@usdoj.gov>; Benjamin Berwick <Benjamin.L.Berwick@usdoj.gov>; Jim Campbell <jcampbell@adflegal.org>; Gore, John <jmgore@jonesday.com>; Alyssa Lareau <alyssa.lareau@usdoj.gov>; Aria Vaughan <aria.vaughan@usdoj.gov>; Stephens, Bob <bob.stephens@nc.gov>; Stewart, William <bstewart@mgsattorneys.com>; Bowers, Karl <butch@butchbowers.com>; Candyce Phoenix <candyce.phoenix@usdoj.gov>; Christopher Brook <cbrook@acluofnc.org>; Pratt, Carolyn <ccpratt@northcarolina.edu>; Corey Stoughton <corey.stoughton@usdoj.gov>; Chase Strangio <cstrangio@aclu.org>; cynthia.robertson@pillsburylaw.com; David Cortman <dcortman@adflegal.org>; Dewart, Deborah <debcpalaw@earthlink.net>; Dwayne Bensing <Dwayne.Bensing@usdoj.gov>; Elizabeth Gill <egill@aclunc.org>; Nestler, Emily B. (CIV) <Emily.B.Nestler@usdoj.gov>; Gordon, Frank <fgordon@mgsattorneys.com>; Nager, Glen <gdnager@jonesday.com>; Schaerr, Gene <GSchaerr@Schaerr-Duncan.com>; Lee, Jason (CIV) <Jason.Lee3@usdoj.gov>; Jon Davidson <jdavidson@lambdalegal.org>; James Esseks <jesseks@aclu.org>; La Rue, Joseph <jlar_ue@adflegal.org>; Burnham, James <jmburnham@jonesday.com>; Jonathan Newton <jonathan.newton@usdoj.gov>; Jeremy Tedesco <jtedesco@adflegal.org>; Ken Connelly <KConnelly@adflegal.org>; Kerri Elliott <kelliott@mgsattorneys.com>; Kyle Palazzolo <kpalazzolo@lambdalegal.org>; Kristen Waggoner <kwaggoner@adflegal.org>; Platzer, Luke C. <LPlatzer@jenner.com>; mark@sigmonlawfirm.com; Matt Sharp <msharp@adflegal.org>; nathaniel.smith@pillsburylaw.com; Francisco, Noel <njfrancisco@jonesday.com>; Peter Renn <prenn@lambdalegal.org>; Smith, Paul M. <PSmith@jenner.com>; Ripley Rand <ripley.rand@usdoj.gov>; Sean r. Keveney <sean.r.keveney@usdoj.gov>; Tara Borelli <tborelli@lambdalegal.org>; Brooks, Tyler <tbrooks@mgsattorneys.com>; Ziko, Thomas <thomasjziko@gmail.com>; Torey Cummings <Torey.Cummings@usdoj.gov>; Tim Shail <tshail@mgsattorneys.com>; Whitney Pellegrino <Whitney.Pellegrino@usdoj.gov>; Gary McCaleb <gmccaleb@adflegal.org>; Nathaniel Bruno <nbruno@adflegal.org>; Doug Wardlow <dwardlow@adflegal.org>; Paul Stancil <stancilp@law.byu.edu>; chris@osbornconflictresolution.com; Robert Potter <rdpotter@rdpotterlaw.com>
Subject: Re: Proposal for limitation of witnesses

If we need a dial in, we can use the below:

Dial-in Number: 1-877-211-3621<tel:1-877-211-3621>
Guest Passcode: 245 055 5672

Scott

On Aug 31, 2016, at 2:24 PM, Wilkens, Scott B. <SWilkens@jenner.com<mailto:SWilkens@jenner.com>> wrote:

The Carcano Plaintiffs are available as well. Thank you to Defendants for circulating a proposed joint report for Magistrate Peake. We will review.

On Aug 31, 2016, at 2:03 PM, Caleb Dalton <CDalton@adflegal.org<mailto:CDalton@adflegal.org>> wrote:

NCFP is available at that time and will join.

<logodb2f4f><http://www.adflegal.org/> Caleb Dalton
Legal Counsel
480-444-0020 (Office)
480-388-8016 (Direct Dial)
480-444-0028 (Fax)
CDalton@ADFlegal.org<mailto:CDalton@ADFlegal.org>
ADFlegal.org<http://ADFlegal.org>

From: Driscoll, Robert [mailto:rdriscoll@mcglinchey.com]
Sent: Wednesday, August 31, 2016 1:40 PM
To: Kyle Duncan <kduncan@schaerr-duncan.com<mailto:kduncan@schaerr-duncan.com>>; Kisch, Lori (CRT) <Lori.Kisch@usdoj.gov<mailto:Lori.Kisch@usdoj.gov>>
Cc: Wilkens, Scott B. <SWilkens@jenner.com<mailto:SWilkens@jenner.com>>; Berwick, Benjamin L. (CIV) <Benjamin.L.Berwick@usdoj.gov<mailto:Benjamin.L.Berwick@usdoj.gov>>; Jim Campbell <jcampbell@adflegal.org<mailto:jcampbell@adflegal.org>>; Gore, John <jmgore@jonesday.com<mailto:jmgore@jonesday.com>>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov<mailto:Alyssa.Lareau@usdoj.gov>>; Vaughan, Aria (CRT) <Aria.Vaughan@usdoj.gov<mailto:Aria.Vaughan@usdoj.gov>>; Stephens, Bob <bob.stephens@nc.gov<mailto:bob.stephens@nc.gov>>; Stewart, William <bstewart@mgsattorneys.com<mailto:bstewart@mgsattorneys.com>>; Bowers, Karl <butch@butchbowers.com<mailto:butch@butchbowers.com>>; Phoenix, Candyce (CRT) <Candyce.Phoenix@usdoj.gov<mailto:Candyce.Phoenix@usdoj.gov>>; Christopher Brook <cbrook@acluofnc.org<mailto:cbrook@acluofnc.org>>; Pratt, Carolyn <ccpratt@northcarolina.edu<mailto:ccpratt@northcarolina.edu>>; Caleb Dalton <CDalton@adflegal.org<mailto:CDalton@adflegal.org>>; Stoughton, Corey (CRT) <Corey.Stoughton@usdoj.gov<mailto:Corey.Stoughton@usdoj.gov>>; Chase Strangio <cstrangio@aclu.org<mailto:cstrangio@aclu.org>>; cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com>; David Cortman <dcortman@adflegal.org<mailto:dcortman@adflegal.org>>; Dewart, Deborah <debcpalaw@earthlink.net<mailto:debcpalaw@earthlink.net>>; Bensing, Dwayne (CRT) <Dwayne.Bensing@usdoj.gov<mailto:Dwayne.Bensing@usdoj.gov>>; Elizabeth Gill <egill@aclunc.org<mailto:egill@aclunc.org>>; Nestler, Emily B. (CIV) <Emily.B.Nestler@usdoj.gov<mailto:Emily.B.Nestler@usdoj.gov>>; Gordon, Frank <fgordon@mgsattorneys.com<mailto:fgordon@mgsattorneys.com>>; Nager, Glen <gdnager@jonesday.com<mailto:gdnager@jonesday.com>>; Gene Schaerr <gschaerr@schaerr-duncan.com<mailto:gschaerr@schaerr-duncan.com>>; Lee, Jason (CIV) <Jason.Lee3@usdoj.gov<mailto:Jason.Lee3@usdoj.gov>>; Jon Davidson <jdavidson@lambdalegal.org<mailto:jdavidson@lambdalegal.org>>; James Esseks <jesseks@aclu.org<mailto:jesseks@aclu.org>>; La Rue, Joseph <jlar_ue@adflegal.org<mailto:jlar_ue@adflegal.org>>; Burnham, James <jmburnham@jonesday.com<mailto:jmburnham@jonesday.com>>; Newton, Jonathan (CRT) <Jonathan.Newton@usdoj.gov<mailto:Jonathan.Newton@usdoj.gov>>; Jeremy Tedesco <jtedesco@adflegal.org<mailto:jtedesco@adflegal.org>>; Ken Connelly <KConnelly@adflegal.org<mailto:KConnelly@adflegal.org>>; Kerri Elliott <kelliott@mgsattorneys.com<mailto:kelliott@mgsattorneys.com>>; Kyle Palazzolo <kpalazzolo@lambdalegal.org<mailto:kpalazzolo@lambdalegal.org>>; Kristen Waggoner <kwaggoner@adflegal.org<mailto:kwaggoner@adflegal.org>>; Platzer, Luke C. <LPlatzer@jenner.com<mailto:LPlatzer@jenner.com>>; mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com>; Matt Sharp <msharp@adflegal.org<mailto:msharp@adflegal.org>>;

nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com>; Francisco, Noel <njfrancisco@jonesday.com<mailto:njfrancisco@jonesday.com>>; Peter Renn <prenn@lambdalegal.org<mailto:prenn@lambdalegal.org>>; Smith, Paul M. <PSmith@jenner.com<mailto:PSmith@jenner.com>>; Rand, Ripley (USANCM) <Ripley.Rand@usdoj.gov<mailto:Ripley.Rand@usdoj.gov>>; Keveney, Sean R (CRT) <Sean.R.Keveney@usdoj.gov<mailto:Sean.R.Keveney@usdoj.gov>>; Tara Borelli <tborelli@lambdalegal.org<mailto:tborelli@lambdalegal.org>>; Brooks, Tyler <tbrooks@mgsattorneys.com<mailto:tbrooks@mgsattorneys.com>>; Ziko, Thomas <thomasjziko@gmail.com<mailto:thomasjziko@gmail.com>>; Cummings, Torey (CRT) <Torey.Cummings@usdoj.gov<mailto:Torey.Cummings@usdoj.gov>>; Tim Shail <tshail@mgsattorneys.com<mailto:tshail@mgsattorneys.com>>; Pellegrino, Whitney (CRT) <Whitney.Pellegrino@usdoj.gov<mailto:Whitney.Pellegrino@usdoj.gov>>; Gary McCaleb <gmccaleb@adflegal.org<mailto:gmccaleb@adflegal.org>>; Nathaniel Bruno <nbruno@adflegal.org<mailto:nbruno@adflegal.org>>; Doug Wardlow <dwardlow@adflegal.org<mailto:dwardlow@adflegal.org>>; Paul Stancil <stancilp@law.byu.edu<mailto:stancilp@law.byu.edu>>; chris@osbornconflictresolution.com<mailto:chris@osbornconflictresolution.com>; Robert Potter <rdpotter@rdpotterlaw.com<mailto:rdpotter@rdpotterlaw.com>>
Subject: RE: Proposal for limitation of witnesses

Lori:

The Governor's team will be on.

Bob

Robert Neil Driscoll

direct:
fax:
email:
office:

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(202) 403-3870
rdriscoll@mcglinchey.com<mailto:rdriscoll@mcglinchey.com>
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From: Kyle Duncan [mailto:kduncan@schaerr-duncan.com]
Sent: Wednesday, August 31, 2016 1:31 PM
To: Kisch, Lori (CRT)
Cc: Wilkens, Scott B.; Berwick, Benjamin L. (CIV); Campbell, James; Gore, John; Lareau, Alyssa (CRT); Vaughan, Aria (CRT); Stephens, Bob; Stewart, William; Bowers, Karl; Phoenix, Candyce (CRT); Christopher Brook; Pratt, Carolyn; Dalton, Caleb; Stoughton, Corey (CRT); Chase Strangio; cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com>; David Cortman; Dewart, Deborah; Bensing, Dwayne (CRT); Elizabeth Gill; Nestler, Emily B. (CIV); Gordon, Frank; Nager, Glen; Gene Schaerr; Lee, Jason (CIV); Jon Davidson; James Esseks; La Rue, Joseph; Burnham, James; Newton, Jonathan (CRT); Jeremy Tedesco; Connelley, Kenneth; Kerri Elliott; Kyle Palazzolo; Waggoner, Kristen; Platzer, Luke C.; mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com>; Sharp, Matthew; nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com>; Francisco, Noel; Peter Renn; Smith, Paul M.; Driscoll, Robert; Rand, Ripley (USANCM); Keveney, Sean R (CRT); Tara Borelli; Brooks, Tyler; Ziko, Thomas; Cummings, Torey (CRT); Tim Shail; Pellegrino, Whitney (CRT); Gary McCaleb; Nathaniel Bruno; Doug Wardlow; Paul Stancil; chris@osbornconflictresolution.com<mailto:chris@osbornconflictresolution.com>; Robert Potter
Subject: Re: Proposal for limitation of witnesses

Lori,

We're available at 3:30 EDT for the intervenor-defendants.

I've added Paul Stancil and Chris Osborn, who should be included on future emails. I've also insert Bob Potter's correct email address; it was incorrect in the original email.

Thanks,
Kyle

Kyle Duncan
SCHAERR | DUNCAN LLP
1717 K Street NW, Suite 900 | Washington, DC 20006
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The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

On Aug 31, 2016, at 1:18 PM, Kisch, Lori (CRT) <Lori.Kisch@usdoj.gov<mailto:Lori.Kisch@usdoj.gov>> wrote:

Counsel,

We request a call today at 3:30 to discuss today's filing that is due and invite everyone to come to the call with a list of the issues that we will want to include in the filing.

I am also writing to follow up on the protective order which we sent to Defendants on Monday for final sign off before filing. The draft we circulated had addressed all written edits received by all parties and we understood that it was a draft that all parties were willing to sign off on. We understood that there were issues raised by some defendants with regard to certain experts' access to confidential information. The United States had proposed that the protective order, as negotiated, move forward without that provision, but that all parties would continue to discuss that issue and the protective order could be amended if necessary. On Monday, Defendants emailed that there were concerns with the protective order and expected to get back to us yesterday. Because at least some Defendants have stated that no document production will begin until a protective order is in place and because depositions are scheduled for next week, we need to understand whether it is possible to move forward with a protective order and what issues remain.

If we are not able to come to an agreement today on the protective order, we will need to include this issue in our filing today to appraise the Magistrate Judge. We appreciate your letting us know by 3:00 today, the scope of the outstanding issues related to the protective order so that we are prepared to present the issues in the court filing.

Additionally, there are several depositions scheduled for next week. We plan to send you in a separate email, D.B.'s attorney's contact information so that you may serve a subpoena for that deposition. We appreciate you letting us know today, whether that subject to a protective order being in place, you intend to move forward with that deposition. Also, there are several other depositions scheduled for early and mid-next week. Given the upcoming Labor Day weekend and the need to arrange for travel for the depositions, please let us know your intentions with regard to those depositions as well. We are also conferring internally regarding those as well.

Thank you all.

Lori

Lori B. Kisch
Special Litigation Counsel
Civil Rights Division
U.S. Department of Justice
601 D Street, N.W.
Washington, D.C. 20579
(202) 305-4422

From: Wilkens, Scott B. [mailto:SWilkens@jenner.com]
Sent: Monday, August 29, 2016 1:21 PM
To: Wilkens, Scott B. <SWilkens@jenner.com<mailto:SWilkens@jenner.com>>; Berwick, Benjamin L. (CIV) <BBerwick@civ.usdoj.gov<mailto:BBerwick@civ.usdoj.gov>>
Cc: Campbell, James <jcampbell@ADFlegal.org<mailto:jcampbell@adflegal.org>>; Gore, John <jmgore@jonesday.com<mailto:jmgore@jonesday.com>>; Kisch, Lori (CRT) <Lori.Kisch@crt.usdoj.gov<mailto:Lori.Kisch@crt.usdoj.gov>>; Lareau, Alyssa (CRT) <Alyssa.Lareau@crt.usdoj.gov<mailto:Alyssa.Lareau@crt.usdoj.gov>>; Vaughan, Aria (CRT) <Aria.Vaughan@crt.usdoj.gov<mailto:Aria.Vaughan@crt.usdoj.gov>>; Stephens, Bob <bob.stephens@nc.gov<mailto:bob.stephens@nc.gov>>; Stewart, William <bstewart@mgsattorneys.com<mailto:bstewart@mgsattorneys.com>>; Bowers, Karl <butch@butchbowers.com<mailto:butch@butchbowers.com>>; Phoenix, Candyce (CRT) <Candyce.Phoenix@crt.usdoj.gov<mailto:Candyce.Phoenix@crt.usdoj.gov>>; Christopher Brook <cbrook@acluofnc.org<mailto:cbrook@acluofnc.org>>; Pratt, Carolyn <ccpratt@northcarolina.edu<mailto:ccpratt@northcarolina.edu>>; Dalton, Caleb <cdalton@ADFlegal.org<mailto:cdalton@adflegal.org>>; Stoughton, Corey (CRT) <Corey.Stoughton@crt.usdoj.gov<mailto:Corey.Stoughton@crt.usdoj.gov>>; Chase Strangio <cstrangio@aclu.org<mailto:cstrangio@aclu.org>>; cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com>; David Cortman <dcortman@adflegal.org<mailto:dcortman@adflegal.org>>; Dewart, Deborah <debcpalaw@earthlink.net<mailto:debcpalaw@earthlink.net>>; Bensing, Dwayne (CRT) <Dwayne.Bensing@crt.usdoj.gov<mailto:Dwayne.Bensing@crt.usdoj.gov>>; Elizabeth Gill <egill@aclunc.org<mailto:egill@aclunc.org>>; Nestler, Emily B. (CIV) <enestler@CIV.USDOJ.GOV<mailto:enestler@civ.usdoj.gov>>; Gordon, Frank <fgordon@mgsattorneys.com<mailto:fgordon@mgsattorneys.com>>; Nager, Glen <gdnager@jonesday.com<mailto:gdnager@jonesday.com>>; Schaerr, Gene <GSchaerr@Schaerr-Duncan.com<mailto:GSchaerr@schaerr-duncan.com>>; Lee, Jason (CIV) <jasolee@CIV.USDOJ.GOV<mailto:jasolee@civ.usdoj.gov>>; Jon Davidson <jdavidson@lambdalegal.org<mailto:jdavidson@lambdalegal.org>>; James Esseks <jesseks@aclu.org<mailto:jesseks@aclu.org>>; La Rue, Joseph <jlar_ue@adflegal.org<mailto:jlar_ue@adflegal.org>>; Burnham, James <jmburnham@jonesday.com<mailto:jmburnham@jonesday.com>>; Newton, Jonathan (CRT) <Jonathan.Newton@crt.usdoj.gov<mailto:Jonathan.Newton@crt.usdoj.gov>>; Jeremy Tedesco <jtedesco@adflegal.org<mailto:jtedesco@adflegal.org>>; Connelley, Kenneth <kconnelly@ADFlegal.org<mailto:kconnelly@adflegal.org>>; Duncan, Kyle <KDuncan@Schaerr-Duncan.com<mailto:KDuncan@schaerr-duncan.com>>; Kerri Elliott <kelliott@mgsattorneys.com<mailto:kelliott@mgsattorneys.com>>; Kyle Palazzolo <kpalazzolo@lambdalegal.org<mailto:kpalazzolo@lambdalegal.org>>; Waggoner, Kristen <kwaggoner@adflegal.org<mailto:kwaggoner@adflegal.org>>; Platzer, Luke C. <LPlatzer@jenner.com<mailto:LPlatzer@jenner.com>>; mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com>; Sharp, Matthew <msharp@adflegal.org<mailto:msharp@adflegal.org>>; nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com>; Francisco, Noel <njfrancisco@jonesday.com<mailto:njfrancisco@jonesday.com>>; Peter Renn <prenn@lambdalegal.org<mailto:prenn@lambdalegal.org>>; Smith, Paul M. <PSmith@jenner.com<mailto:PSmith@jenner.com>>; Robert Potter <rdpotter%rdpotterlaw_.com@JonesDay.com<mailto:rdpotterlaw_.com@jonesday.com>>; Driscoll, Robert <rdriscoll@mcglinchey.com<mailto:rdriscoll@mcglinchey.com>>; Rand, Ripley (USANCM) <Ripley.Rand@usdoj.gov<mailto:Ripley.Rand@usdoj.gov>>; Keveney, Sean R (CRT) <Sean.Keveney@crt.usdoj.gov<mailto:Sean.Keveney@crt.usdoj.gov>>; Tara Borelli <tborelli@lambdalegal.org<mailto:tborelli@lambdalegal.org>>; Brooks, Tyler <tbrooks@mgsattorneys.com<mailto:tbrooks@mgsattorneys.com>>; Ziko, Thomas <thomasjziko@gmail.com<mailto:thomasjziko@gmail.com>>; Cummings, Torey (CRT) <Torey.Cummings@crt.usdoj.gov<mailto:Torey.Cummings@crt.usdoj.gov>>; Tim Shail <tshail@mgsattorneys.com<mailto:tshail@mgsattorneys.com>>; Pellegrino, Whitney (CRT) <Whitney.Pellegrino@crt.usdoj.gov<mailto:Whitney.Pellegrino@crt.usdoj.gov>>; Gary McCaleb <gmccaleb@adflegal.org<mailto:gmccaleb@adflegal.org>>; Nathaniel Bruno <nbruno@adflegal.org<mailto:nbruno@adflegal.org>>; Doug Wardlow <dwardlow@adflegal.org<mailto:dwardlow@adflegal.org>>
Subject: RE: Proposal for limitation of witnesses

All,

Here is the dial in information for the 3:30 call:

Dial in: 1-877-211-3621
Passcode: 245-055-5672

Thanks,
Scott

From: Wilkens, Scott B.
Sent: Monday, August 29, 2016 12:01 PM
To: Benjamin Berwick
Cc: Campbell, James; Gore, John; Lori Kisch; Alyssa Lareau; Aria Vaughan; Stephens, Bob; Stewart, William; Bowers, Karl; Candyce Phoenix; Christopher Brook; Pratt, Carolyn; Dalton, Caleb; Corey Stoughton; Chase Strangio;cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com>; David Cortman; Dewart, Deborah; Dwayne Bensing; Elizabeth Gill; Nestler, Emily B. (CIV); Gordon, Frank; Nager, Glen; Schaerr, Gene; Lee, Jason (CIV); Jon Davidson; James Esseks; La Rue, Joseph; Burnham, James; Jonathan Newton; Jeremy Tedesco; Connelley, Kenneth; Duncan, Kyle; Kerri Elliott; Kyle Palazzolo; Waggoner, Kristen; Platzer, Luke C.; mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com>; Sharp, Matthew; nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com>; Francisco, Noel; Peter Renn; Smith, Paul M.; Robert Potter; Driscoll, Robert; Ripley Rand; Sean r. Keveney; Tara Borelli; Brooks, Tyler; Ziko, Thomas; Torey Cummings; Tim Shail; Whitney Pellegrino; Gary McCaleb; Nathaniel Bruno; Doug Wardlow
Subject: Re: Proposal for limitation of witnesses

I believe all parties have now indicated their availability at 3:30. Let's have a call then. I will circulate dial in information.

On Aug 29, 2016, at 11:57 AM, Berwick, Benjamin L. (CIV) <Benjamin.L.Berwick@usdoj.gov<mailto:Benjamin.L.Berwick@usdoj.gov>> wrote:
So is counsel for defendants in NCFP (Emily Nestler will join).

From: Jim Campbell [mailto:jcampbell@adflegal.org]
Sent: Monday, August 29, 2016 11:50 AM
To: 'John M Gore'; Kisch, Lori (CRT)
Cc: Lareau, Alyssa (CRT); Vaughan, Aria (CRT); Berwick, Benjamin L. (CIV); Stephens, Bob; Stewart, William; Bowers, Karl; Phoenix, Candyce (CRT); Christopher Brook; Pratt, Carolyn; Caleb Dalton; Stoughton, Corey (CRT); Chase Strangio; cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com>; David Cortman; Dewart, Deborah; Bensing, Dwayne (CRT); Elizabeth Gill; Nestler, Emily B. (CIV); Gordon, Fran k; Nager, Glen; Gene Schaerr; Lee, Jason (CIV); Jon Davidson; James Esseks; La Rue, Joseph; Burnham, James; Newton, Jonathan (CRT); Jeremy Tedesco; Ken Connelly; Kyle Duncan; Kerri Elliott; Kyle Palazzolo; Kristen Waggoner; Platzer, Luke C.;mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com>; Matt Sharp; nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com>; Francisco, Noel; Peter Renn; Smith, Paul M.; Robert Potter; Driscoll, Robert; Rand, Ripley (USANCM); Keveney, Sean R (CRT); Wilkens, Scott B.; Tara Borelli; Brooks, Tyler; Ziko, Thomas; Cummings, Torey (CRT); Tim Shail; Pellegrino, Whitney (CRT); Gary McCaleb; Nathaniel Bruno; Doug Wardlow
Subject: RE: Proposal for limitation of witnesses

Counsel for NCFP is also available at 3:30.

<image001.png><http://www.adflegal.org/>

Jim Campbell
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From: John M Gore [mailto:jmgore@JonesDay.com]
Sent: Monday, August 29, 2016 8:48 AM
To: Kisch, Lori (CRT)
Cc: Lareau, Alyssa (CRT); Vaughan, Aria (CRT); Berwick, Benjamin L. (CIV); Stephens, Bob; Stewart, William; Bowers, Karl; Phoenix, Candyce (CRT); Christopher Brook; Pratt, Carolyn; Caleb Dalton; Stoughton, Corey (CRT); Chase Strangio; cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com>; David Cortman; Dewart, Deborah; Bensing, Dwayne (CRT); Elizabeth Gill; Nestler, Emily B. (CIV); Gordon, Fran k; Nager, Glen; Gene Schaerr; Lee, Jason (CIV); Jim Campbell; Jon Davidson; James Esseks; La Rue, Joseph; Burnham, James; Newton, Jonathan (CRT); Jeremy Tedesco; Ken Connelly; Kyle Duncan; Kerri Elliott; Kyle Palazzolo; Kristen Waggoner; Platzer, Luke C.;mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com>; Matt Sharp; nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com>; Francisco, Noel; Peter Renn; Smith, Paul M.; Robert Potter; Driscoll, Robert; Rand, Ripley (USANCM); Keveney, Sean R (CRT); Wilkens, Scott B.; Tara Borelli; Brooks, Tyler; Ziko, Thomas; Cummings, Torey (CRT); Tim Shail; Pellegrino, Whitney (CRT)
Subject: Re: Proposal for limitation of witnesses

UNC Defendants are available at 3:30 as well.

John M. Gore (Bio)<http://www.jonesday.com/jmgore/>
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From: "Kisch, Lori (CRT)" <Lori.Kisch@usdoj.gov<mailto:Lori.Kisch@usdoj.gov>>
To: Kyle Duncan <kduncan@schaerr-duncan.com<mailto:kduncan@schaerr-duncan.com>>
Cc: "Wilkens, Scott B." <SWilkens@jenner.com<mailto:SWilkens@jenner.com>>, "Stoughton, Corey (CRT)" <Corey.Stoughton@usdoj.gov<mailto:Corey.Stoughton@usdoj.gov>>, "Gore, John" <jmgore@jonesday.com<mailto:jmgore@jonesday.com>>, "Tara Borelli" <tborelli@lambdalegal.org<mailto:tborelli@lambdalegal.org>>, "Lareau, Alyssa (CRT)" <Alyssa.Lareau@usdoj.gov<mailto:Alyssa.Lareau@usdoj.gov>>, "Vaughan, Aria (CRT)" <Aria.Vaughan@usdoj.gov<mailto:Aria.Vaughan@usdoj.gov>>, "Berwick, Benjamin L. (CIV)" <Benjamin.L.Berwick@usdoj.gov<mailto:Benjamin.L.Berwick@usdoj.gov>>, "Stephens, Bob" <bob.stephens@nc.gov<mailto:bob.stephens@nc.gov>>, "Stewart, William" <bstewart@mgsattorneys.com<mailto:bstewart@mgsattorneys.com>>, "Bowers, Karl" <butch@butchbowers.com<mailto:butch@butchbowers.com>>, "Phoenix, Candyce (CRT)" <Candyce.Phoenix@usdoj.gov<mailto:Candyce.Phoenix@usdoj.gov>>, Christopher Brook <cbrook@acluofnc.org<mailto:cbrook@acluofnc.org>>, "Pratt, Carolyn" <ccpratt@northcarolina.edu<mailto:ccpratt@northcarolina.edu>>, "Dalton, Caleb" <cdalton@ADFlegal.org<mailto:cdalton@ADFlegal.org>>, Chase Strangio <cstrangio@aclu.org<mailto:cstrangio@aclu.org>>, "cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com>" <cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com>>, David Cortman <dcortman@adflegal.org<mailto:dcortman@adflegal.org>>, "Dewart, Deborah" <debcpalaw@earthlink.net<mailto:debcpalaw@earthlink.net>>, "Bensing, Dwayne (CRT)" <Dwayne.Bensing@usdoj.gov<mailto:Dwayne.Bensing@usdoj.gov>>, Elizabeth Gill <egill@aclunc.org<mailto:egill@aclunc.org>>, "Nestler, Emily B. (CIV)" <Emily.B.Nestler@usdoj.gov<mailto:Emily.B.Nestler@usdoj.gov>>, "Gordon, Fran k" <fgordon@mgsattorneys.com<mailto:fgordon@mgsattorneys.com>>, "Nager, Glen" <gdnager@jonesday.com<mailto:gdnager@jonesday.com>>, "Gene Schaerr" <gschaerr@schaerr-duncan.com<mailto:gschaerr@schaerr-duncan.com>>, "Lee, Jason (CIV)" <Jason.Lee3@usdoj.gov<mailto:Jason.Lee3@usdoj.gov>>, "Campbell, James" <jcampbell@ADFlegal.org<mailto:jcampbell@ADFlegal.org>>, "Jon Davidson" <jdavidson@lambdalegal.org<mailto:jdavidson@lambdalegal.org>>, James Esseks <jesseks@aclu.org<mailto:jesseks@aclu.org>>, "La Rue, Joseph" <jlar_ue@adflegal.org<mailto:jlar_ue@adflegal.org>>, "Burnham, James" <jmburnham@jonesday.com<mailto:jmburnham@jonesday.com>>, "Newton, Jonathan (CRT)" <Jonathan.Newton@usdoj.gov<mailto:Jonathan.Newton@usdoj.gov>>, Jeremy Tedesco <jtedesco@adflegal.org<mailto:jtedesco@adflegal.org>>, "Connelley, Kenneth" <kconnelly@ADFlegal.org<mailto:kconnelly@ADFlegal.org>>, Kerri Elliott <kelliott@mgsattorneys.com<mailto:kelliott@mgsattorneys.com>>, Kyle Palazzolo <kpalazzolo@lambdalegal.org<mailto:kpalazzolo@lambdalegal.org>>, "Waggoner, Kristen" <kwaggoner@adflegal.org<mailto:kwaggoner@adflegal.org>>, "Platzer, Luke C." <LPlatzer@jenner.com<mailto:LPlatzer@jenner.com>>, "mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com>" <mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com>>, "Sharp, Matthew" <msharp@adflegal.org<mailto:msharp@adflegal.org>>, "nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com>" <nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com>>, "Francisco, Noel" <njfrancisco@jonesday.com<mailto:njfrancisco@jonesday.com>>, Peter Renn <prenn@lambdalegal.org<mailto:prenn@lambdalegal.org>>, "Smith, Paul M." <PSmith@jenner.com<mailto:PSmith@jenner.com>>, Robert Potter <rdpotter@rdpotterlaw.com<mailto:rdpotter@rdpotterlaw%20.com>>, "Driscoll, Robert" <rdriscoll@mcglinchey.com<mailto:rdriscoll@mcglinchey.com>>, "Rand, Ripley (USANCM)" <Ripley.Rand@usdoj.gov<mailto:Ripley.Rand@usdoj.gov>>, "Keveney, Sean R (CRT)" <Sean.R.Keveney@usdoj.gov<mailto:Sean.R.Keveney@usdoj.gov>>, "Brooks, Tyler" <tbrooks@mgsattorneys.com<mailto:tbrooks@mgsattorneys.com>>, "Ziko, Thomas" <thomasjziko@gmail.com<mailto:thomasjziko@gmail.com>>, "Cummings, Torey (CRT)" <Torey.Cummings@usdoj.gov<mailto:Torey.Cummings@usdoj.gov>>, Tim Shail <tshail@mgsattorneys.com<mailto:tshail@mgsattorneys.com>>, "Pellegrino, Whitney (CRT)" <Whitney.Pellegrino@usdoj.gov<mailto:Whitney.Pellegrino@usdoj.gov>>
Date: 08/29/2016 11:47 AM
Subject: Re: Proposal for limitation of witnesses

Plaintiff United States is available at 3:30.

On Aug 29, 2016, at 11:40 AM, Kyle Duncan <kduncan@schaerr-duncan.com<mailto:kduncan@schaerr-duncan.com><mailto:kduncan@schaerr-duncan.com>> wrote:

Scott,

The Intervenor Defendants are available later this afternoon, after 3:30 pm EDT. We were just waiting on other defendants to weigh in on their availability for a call this afternoon.

Thanks,
Kyle

Kyle Duncan
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The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

On Aug 29, 2016, at 10:43 AM, Wilkens, Scott B. <SWilkens@jenner.com<mailto:SWilkens@jenner.com><mailto:SWilkens@jenner.com>> wrote:

Following up on Corey's email below, are Defendants available this afternoon for a call to discuss numerical limits on depositions?

Thanks,
Scott

-----Original Message-----
From: Stoughton, Corey (CRT) [mailto:Corey.Stoughton@usdoj.gov]
Sent: Friday, August 26, 2016 8:42 PM
To: Wilkens, Scott B.; Gore, John
Cc: Tara Borelli; Alyssa Lareau; Aria Vaughan; Benjamin Berwick; Stephens, Bob; Stewart, William; Bowers, Karl; Candyce Phoenix; Christopher Brook; Pratt, Carolyn; Dalton, Caleb; Chase Strangio; cynthia.robertson@pillsburylaw.com<mailto:cynthia.robertson@pillsburylaw.com><mailto:cynthia.robertson@pillsburylaw.com>; David Cortman; Dewart, Deborah; Dwayne Bensing; Elizabeth Gill; Nestler, Emily B. (CIV); Gordon, Frank; Nager, Glen; Schaerr, Gene; Lee, Jason (CIV); Campbell, James; Jon Davidson; James Esseks; La Rue, Joseph; Burnham, James; Jonathan Newton; Jeremy Tedesco; Connelley, Kenneth; Duncan, Kyle; Kerri Elliott; Kyle Palazzolo; Waggoner, Kristen; Lori Kisch; Platzer, Luke C.;mark@sigmonlawfirm.com<mailto:mark@sigmonlawfirm.com><mailto:mark@sigmonlawfirm.com>; Sharp, Matthew; nathaniel.smith@pillsburylaw.com<mailto:nathaniel.smith@pillsburylaw.com><mailto:nathaniel.smith@pillsburylaw.com>; Francisco, Noel; Peter Renn; Smith, Paul M.; Robert Potter; Driscoll,

Robert; Ripley Rand; Sean r. Keveney; Brooks, Tyler; Ziko, Thomas; Torey Cummings; Tim Shail; Whitney Pellegrino; Lori Kisch
Subject: RE: Proposal for limitation of witnesses

The United States agrees with Scott's email below; reducing the time for President Spellings' deposition cannot be part of this arrangement. I hope we can return to the broader discussion of whether numerical limits on depositions can be agreed upon, along with perhaps limits on some of the other individual depositions previously discussed. Looking forward to hearing the defendants' further views on that. If it is helpful, we could be available for a call to discuss where we stand on this Monday afternoon.

Thanks,
Corey

Corey Stoughton
Senior Counsel, DOJ-Civil Rights
(202) 616-2124

-----Original Message-----
From: Wilkens, Scott B. [mailto:SWilkens@jenner.com]
Sent: Friday, August 26, 2016 8:14 PM
To: Gore, John <jmgore@jonesday.com<mailto:jmgore@jonesday.com><mailto:jmgore@jonesday.com>>
Cc: Tara Borelli <tborelli@lambdalegal.org<mailto:tborelli@lambdalegal.org><mailto:tborelli@lambdalegal.org>>; Lareau, Alyssa (CRT) <Alyssa.Lareau@crt.usdoj.gov<mailto:Alyssa.Lareau@crt.usdoj.gov><mailto:Alyssa.Lareau@crt.usdoj.gov>>; Vaughan, Aria (CRT) <Aria.Vaughan@crt.usdoj.gov<mailto:Aria.Vaughan@crt.usdoj.gov><mailto:Aria.Vaughan@crt.usdoj.gov>>; Berwick, Benjamin L. 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Subject: Re: Proposal for limitation of witnesses

John:

The Carcano Plaintiffs do not agree to such a limit for Margaret Spellings, who if memory serves is the only fact witness UNC has identified. She is not a party alleging any harm and at this point cannot plausibly be characterized as a non-party fact witness. Particularly in light of today's preliminary injunction decision, she is of central importance in this matter. If UNC can articulate a principled basis for limiting her deposition, we will consider it, but absent some extraordinary circumstances we don't understand how her deposition can be so limited.

Regards,
Scott

On Aug 26, 2016, at 6:46 PM, John M Gore <jmgore@JonesDay.com<mailto:jmgore@jonesday.com><mailto:jmgore@jonesday.com><mailto:jmgore@jonesday.com>> wrote:

Counsel:

In response to the question below, the UNC Defendants are amenable to the four-hour limits proposed by the Carcano plaintiffs for parties alleging harm and by DOJ for non-party fact witnesses, provided those limits are available fairly across the board to defendants and defense witnesses, including Margaret Spellings.

Thanks.

John M. Gore (Bio)<http://www.jonesday.com/jmgore/>>
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From: Tara Borelli <tborelli@lambdalegal.org<mailto:tborelli@lambdalegal.org><mailto:tborelli@lambdalegal.org><mailto:tborelli@lambdalegal.org>>
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Date: 08/26/2016 03:41 PM
Subject: RE: Proposal for limitation of witnesses

Counsel:

This email responds both to the proposed deposition schedule, and the proposal for deposition limitations described in the email correspondence below:

With respect to the proposed deposition schedule, the Carcaño plaintiffs have a few conflicts, in addition to the ones outlined by the United States, and propose the following changes:

Fact:
- Move Glazier from 9/1 to morning of 9/22.
- Move R.F. deposition from Sanford to Charlotte so attorney can take both D.H. and R.F. that day.
- Move H.S. from 9/12 to 9/22 in Winston-Salem (not Raleigh).
- Move McGarry from 9/22 to 9/12.
- Move Preston from 9/14 to morning of 9/12 (in Raleigh).
- Keep Solomon on 9/19 (Carcaño team cannot do 9/15 or 9/16) or find alternative date.
- Schedule Walker for afternoon on 9/13 (time currently unspecified).
- Add Katherine Schafer and Julie Hall-Panameno to schedule per availability previously provided.

Expert:
- Move Mull from 9/6 to 9/28; alternatively, Mull is available on 9/29, 10/3 or 10/4.

We note with regard to Margaret Spellings' deposition on 9/20 in Chapel Hill, we understand she will be available for a full day deposition consistent with the federal rules. If the UNC defendants are seeking to limit her deposition, please let us know immediately.

In addition to these changes, we are awaiting proposed dates for the depositions of the Governor and the legislative intervenors subject to the ongoing meet and confers.

With respect to the proposed deposition limitations, the Carcaño plaintiffs can also agree to the proposal with the modifications identified by the United States, plus the following changes:
- Total number of expert witnesses per side is 6.
- We do not agree to a 4-hour limit for non-medical experts and non-party fact witnesses.
- Additional time limits of 4-hour depositions for parties and fact witnesses alleging harm (with 30 minutes for the other side).

We look forward to your response.

Best,
Tara

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-----Original Message-----
From: Stoughton, Corey (CRT) [mailto:Corey.Stoughton@usdoj.gov]
Sent: Thursday, August 25, 2016 7:01 PM
To: Driscoll, Robert
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Subject: Re: Proposal for limitation of witnesses

Apologies if you receive this email twice; we have been having email problems all afternoon.

Bob,

Thank you for this extremely constructive proposal. In large measure, I think the United States can agree with it, with some modifications. In particular, we would propose a small increase in the number of fact witnesses for the plaintiff side, because we are concerned given the number of different claims among the plaintiffs about meeting our burden with 8 witnesses shared with Carcano plaintiffs. We also think it would serve the overall goal of reducing the burden of discovery to further limit the time for certain depositions.

As you noted on behalf of Defendants, this proposal has to be contingent on reaching some reasonable stipulations, some of which I proposed in general terms on the phone yesterday. As we also discussed on the phone, this proposal must include the NCFP v United States litigation even though it has not yet been consolidated for trial at this stage. We are amendable to excluding named parties from these caps, as Jim suggested, in order to make the inclusion of the NCFP case acceptable. And, of course, we understand all of this in contingent on the Court denying the motion to stay.

I will also add that, before we can make any final commitment to this arrangement, it would be critical to have some discussion about what witnesses would still be in play after the limitations were imposed, in order to have a clearer sense of what fact issues remain in play and whether we can address those within the limitations. One way to address this would be to negotiate this agreement in principle but reserve any party's final agreement until new lists of witnesses the parties intend to call at trial under this regime can be exchanged. With that said, here is our modified proposal:

1. Limiting total number of expert witnesses per side to 5

2. Limiting total number of fact witnesses to 10 for plaintiff side and 8 for defendants/NCFP

3. Named parties in any of the cases, including witnesses offered in response to a 30(b)(6) notice directed at a named party, are excluded from the witness caps.

4. Additional time limits of 4 hour depositions for all non-medical experts and non-party fact witnesses (with the extra 30 minute period discussed for the other side)

On a related subject, and without necessarily suggesting these would be among our 5 experts if we proceed with the limitations under discussion, we would propose October 6 for the deposition of Chief Magnus, in Tucson, and October 7 for Dr. Miner, in DC. Let us know if those dates work.

Thanks,
Corey

On Aug 24, 2016, at 2:41 PM, Driscoll, Robert <rdriscoll@mcglinchey.com<mailto:rdriscoll@mcglinchey.com><mailto:rdriscoll@mcglinchey.com><mailto:rdriscoll@mcglinchey.com>>>>> wrote:

All:

In furtherance of our discussions on the call yesterday, and in making a good faith effort to limit the number of fact and expert witnesses (and hence depositions) to a reasonable number given the limited pre-trial schedule, the defendants and intervenor-defendants propose to reduce their proposed number of fact and expert witnesses. Please note that this proposal is contingent on (1) the court denying the pending motion to stay these proceedings; (2) the plaintiffs collectively agreeing to limit their fact and expert witnesses to a comparable number; and (3) the parties reaching reasonable stipulations that will eliminate some fact witnesses. With those caveats in mind, defendants and intervenor-defendants propose the following:

1. Limiting the total number of expert witnesses per side to 5.

2. Limiting the total number of fact witnesses per side to 8.

Stipulations to be proposed by the plaintiffs may result in reducing the number of these witnesses further. Finally, these limitations would not apply to North Carolina for Privacy's separate action, which has not been consolidated for trial.

Thank you.

Bob

Robert Neil Driscoll

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